

### REMARKS

Applicant has reviewed the Office Action dated October 31, 2002, and the references cited therewith.

Claims 1 - 3, 42, 43, 50, 53 and 55 are amended, and claims 59 - 65 are newly added; as a result, claims 1 - 9, 42 - 44, and 49 - 65 are now pending in this application.

Applicant believes that the amendments are supported by numerous places in the instant specification and that no new matter is added thereby.

#### Rejections Under 35 U.S.C. § 102

In the Office Action, claims 1, 3 - 6, 9, 49 - 52 and 54 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kemkers et al. (U.S. Patent No. 3,938,228, "Kemkers").

#### Claims 1, 3-6, 9, and 49

Claim 1 was amended to better describe the subject matter recited in the claim. Applicant believes that claim 1 is not anticipated by Kemkers since it does not include each limitation recited in the claim. For instance, among other differences, Applicant cannot find in Kemkers a capacitor comprising a conductor electrically coupled to at least one metal layer of the plurality of flat metal layers with at least a portion of the conductor positioned between the case and the lid, as recited in claim 1. In contrast, Kemkers references a cylindrical capacitor in several places, including, but not limited to, the claims and the specification. Thus, it is believed that Kemkers fails to provide the recited subject matter.

Claims 3-6, 9, and 49 are dependent claims that are directly or ultimately dependent on parent claim 1 and the discussion above for claim 1 is repeated herein to distinguish the recited subject matter over Kemkers.

Reconsideration and allowance of the rejected claims are respectfully requested.

#### Claims 50-52 and 54

Claim 50 was amended to better describe the recited subject matter. Applicant believes that claim 50 is not anticipated by Kemkers since it does not include each limitation recited in the

claim. For instance, Applicant cannot find in Kemkers a capacitor comprising, among other things, a conductor electrically coupled to at least one metal layer of the plurality of flat metal layers and with at least a portion of the conductor positioned between the case and the cover in the interface, as recited in claim 50. In contrast, Kemkers references a cylindrical capacitor in several places, including, but not limited to, the claims and the specification. Thus, it is believed that Kemkers fails to provide the recited subject matter.

Claims 51-52 and 54 are dependent claims that are directly or ultimately dependent on parent claim 50 and the discussion above for claim 50 is repeated herein to distinguish the recited subject matter over Kemkers.

Reconsideration and allowance of the rejected claims are respectfully requested.

In the Office Action, claims 1 - 5, 7 - 9, 42 - 44, 49 - 53 and 55 - 58 were rejected under 35 U.S.C. § 102(e) as being anticipated by Miltich et al. (U.S. Patent No. 6,402,793, "Miltich").

Applicant respectfully traverses the rejection. In so doing, Applicant expressly reserves the right to swear behind Miltich at a later date. Detailed responses to the rejections follow:

Claims 1-5, 7-9, and 49

Claim 1 was amended to better describe the recited subject matter. Applicant believes that claim 1 is not anticipated by Miltich since it does not include each limitation recited in the claim. For instance, among other differences, Applicant cannot find in Miltich a capacitor comprising a conductor electrically coupled to at least one metal layer of the plurality of flat metal layers with at least a portion of the conductor positioned between the case and the lid, as recited in claim 1. Thus, it is believed that Miltich fails to provide the recited subject matter.

Claims 2-5, 7-9, and 49 are dependent claims that are directly or ultimately dependent on parent claim 1 and the discussion above for claim 1 is repeated herein to distinguish the recited subject matter over Miltich.

Reconsideration and allowance of the rejected claims are respectfully requested.

Claims 42-44

Claim 42 was amended to better describe the recited subject matter. Applicant believes that claim 42 is not anticipated by Miltich since it does not include each limitation recited in the claim. For instance, applicant is unable to find in Miltich an implantable medical device comprising, among other things, wherein each capacitor comprises a container having a case and lid, a flat capacitor stack positioned in the case, the flat capacitor stack including a plurality of flat metal layers and a conductor electrically coupled to at least one metal layer of the plurality of metal layers and positioned between the case and lid, as recited in claim 42. Thus, it is believed that Miltich fails to provide the recited subject matter.

Claims 43 and 44 are dependent claims that are directly or ultimately dependent on parent claim 42 and the discussion above for claim 42 is repeated herein to distinguish the recited subject matter over Miltich.

Reconsideration and allowance of the rejected claims are respectfully requested.

Claims 50-53

Claim 50 was amended to better describe the recited subject matter. Applicant believes that claim 50 is not anticipated by Miltich since it does not include each limitation recited in the claim. For instance, Applicant cannot find in Miltich a capacitor comprising, among other things, a conductor electrically coupled to at least one metal layer of the plurality of flat metal layers and with at least a portion of the conductor positioned between the case and the cover in the interface, as recited in claim 50. Thus, it is believed that Miltich fails to provide the recited subject matter.

Claims 52 and 53 are dependent claims that are directly or ultimately dependent on parent claim 50 and the discussion above for claim 50 is repeated herein to distinguish the recited subject matter over Miltich.

Reconsideration and allowance of the rejected claims are respectfully requested.

Claims 55-58

Claim 55 was amended to better describe the recited subject matter. Applicant believes that claim 55 is not anticipated by Miltich since it does not include each limitation recited in the claim. For instance, Applicant cannot find in Miltich a method of assembling a capacitor comprising, among other things, providing a conductor connected to at least one metal layer of a plurality of flat metal layers, as recited by claim 55. Thus, it is believed that Miltich fails to provide the recited subject matter.

Claims 56-58 are dependent claims that are directly or ultimately dependent on parent claim 55 and the discussion above for claim 55 is repeated herein to distinguish the recited subject matter over Miltich.

Reconsideration and allowance of the rejected claims are respectfully requested.

Reservation of Right to Swear Behind Miltich

In traversing the rejections, Applicant expressly reserves the right to swear behind Miltich at a later date.

AMENDMENT AND RESPONSE

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Dkt: 279.268US1

**CONCLUSION**

Claims 1, 2, 3, 42, 43, 50, 53, and 55 are amended herein. Claims 59 - 65 are added hereby. Claims 1 - 9, 42 - 44 and 49 - 65 are now pending.

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612-359-3267) to facilitate prosecution of this application.

If necessary, please charge any additional fees to Deposit Account No. 19-0743.

Respectfully submitted,

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Arlington, VA, 22313-1450, on this 12 day of June, 2003.

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